

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

BRIAN BOWEN, II,

Plaintiff,

v.

NO. 3:18-CV-3118-JFA

JAMES GATTO, MERL CODE,
CHRISTIAN DAWKINS, MUNISH
SOOD, THOMAS GASSNOLA, and
CHRISTOPHER RIVERS,

Defendants,

and ADIDAS AMERICA, INC.,

Defendant-Cross Claimant,

v.

MUNISH SOOD and
THOMAS GASSNOLA,

Defendants-Cross Defendants,

and BRIAN BOWEN, SR.,

Cross Defendant.

DECLARATION OF JOSEPHINE R. POTUTO

I, Josephine R. Potuto, pursuant to 28 U.S.C. § 1746 and under penalty of perjury, declare as follows:

1. I am the Richard H. Larson Professor of Constitutional Law at the University of Nebraska College of Law, a position I have held since 1988. My full curriculum vitae is attached as Exhibit A to this declaration. I have been retained by Debevoise & Plimpton LLP, counsel for Defendant adidas America, Inc. (“adidas”) in this action at the rate of \$500 per hour.

I submit this declaration on personal knowledge and in support of adidas's Memorandum of Law in Support of Its Motion for Summary Judgment on RICO Standing. I am over the age of 18 and competent to testify.

2. I have extensive experience interpreting and applying the Division I bylaws of the National Collegiate Athletic Association (the "NCAA"), which are contained in the NCAA Division I Manual. I served for nine years on the NCAA Division I Committee on Infractions: I was the chair of that committee from 2006 to 2008; vice chair from 2004 to 2006; and a member from 1999 to 2004. From 2003 to 2007 I represented the Big 12 Conference on the NCAA Division I Management Council, at the time the chief legislative body of Division I. From 2016 to 2020 I served as a member of the NCAA Interpretations Committee. Among other NCAA committees, I served from 2010 to 2016 as a member of the NCAA Student-Athlete Affairs Advisory Committee. From 1997 to 2020 I was the University of Nebraska's Faculty Athletic Representative, a position in which I had oversight of NCAA rules compliance and student-athlete well-being. In that role, I drafted or supervised hundreds of institutional self reports, student-athlete reinstatement requests, waivers, and interpretative requests. Please see Exhibit A for a full accounting of my experience, including the publications I have authored in the past ten years and cases in which I have offered testimony in the past four years. Through this work, as well as my teaching, symposia participation, and academic research, I have developed detailed knowledge of the workings of the NCAA bylaws, committees, and processes.

3. The opinions set forth below are based on the 2017-18 NCAA Division I Manual (the "2017 Manual"), which took effect on August 1, 2017; the 2016-17 NCAA Division I Manual (the "2016 Manual"), which took effect on August 1, 2016; and the 2015-16 NCAA Division I Manual (the "2015 Manual"), which took effect on August 1, 2015. With respect to

the bylaws I discuss, these three manuals are identical. The below opinions are also based on the NCAA Division I Committee on Student-Athlete Reinstatement Guidelines (Revised May 2020) (the “2020 Reinstatement Guidelines”).

4. NCAA Bylaw 12.3.1.3 (Bylaw 12.3.1.2 in the 2015 Manual) prohibits transportation or other benefits from prospective agents to student-athletes and prospective student-athletes, or their friends or family members. It states that:

An individual shall be ineligible per Bylaw 12.3.1 if he or she (or his or her relatives or friends) accepts transportation or other benefits from:

(a) Any person who represents any individual in the marketing of his or her athletics ability. The receipt of such expenses constitutes compensation based on athletics skill and is an extra benefit not available to the student body in general; or

(b) An agent, even if the agent has indicated that he or she has no interest in representing the student-athlete in the marketing of his or her athletics ability or reputation and does not represent individuals in the student-athlete’s sport.

Violations of this bylaw may be committed before or after an athlete’s enrollment at an NCAA institution. Bylaw 12.01.3. Violations of this bylaw may be committed not only by an athlete, but also by his/her relatives and friends. Bylaw 12.3.1.3 (Bylaw 12.3.1.2 in the 2015 Manual). Violations of this bylaw cover the type of conduct in which agents engage, whether or not the person involved in the particular conduct refers to himself/herself as an “agent” and even if (s)he is not associated with a registered sports agency. NCAA Bylaw 12.02.1. Whether committed before or after enrollment at an NCAA institution, and whether committed by an athlete or his/her relatives and friends, violations of this bylaw render an athlete ineligible to compete. Bylaw 12.3.1.

5. In addition to activity that specifically involves payments and other involvement by prospective agents, NCAA bylaws generally prohibit payments to athletes by all others,

whether achieved directly or indirectly. Bylaw 12.1.2. Violations of these bylaws may be committed before or after an athlete's enrollment at an NCAA institution. Bylaw 12.01.3. Whether committed before or after enrollment at an NCAA institution, these violations render an athlete ineligible to compete. Bylaw 12.1.2.

6. Prohibited forms of pay include "direct or indirect salary, gratuity or comparable compensation." Bylaw 12.1.2.1.1. NCAA bylaws provide other examples of prohibited pay. These include use of athletic skill directly or indirectly for pay in any form in a sport, Bylaw 12.1.2(a); preferential treatment or benefits based on athletics skill, Bylaw 12.1.2.1.6; funds received by parents from a competition's sponsor that are in excess of actual and necessary travel, room and board, and any reasonable entertainment expenses, unless these funds are provided to the parents of all participants, Bylaw 12.1.2.1.4.4, 12.02.2(j); and expense money or fees for anyone other than a competing athlete, Bylaw 12.02.2.1.

7. An athlete may violate any of these bylaws through indirect payments to family members. His/her institution is obliged to evaluate whether a violation has been committed indirectly by a family member. Const. 2.1.2, 2.8.1; Bylaw 12.11.1. Should it conclude that a violation was committed, it is obliged to report that violation to the NCAA enforcement staff. Bylaw 19.2.2.

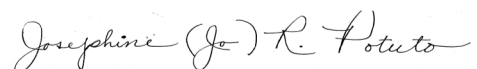
8. When investigating a student-athlete's potential ineligibility, an institution likely will withhold an athlete from practice and competition. Should it compete an athlete due to an erroneous conclusion that there is insufficient evidence from which to conclude there is a violation, it will have committed a separate violation and risk Committee on Infractions sanctions. Bylaw 12.11.

9. An institution may, but is not obliged to, seek reinstatement of eligibility for a student-athlete. Bylaw 12.12.1. In order to seek the student-athlete's reinstatement, the institution must first declare the student ineligible. The Student-Athlete Reinstatement Committee considers the degree of an athlete's culpability for a violation when it imposes a withholding or ineligibility condition to be served before reinstatement. *See* 2020 Reinstatement Guidelines at 5.

10. Provided that an institution is not discriminating against a student on a prohibited basis, a student at an NCAA Division I institution has no right under the NCAA bylaws to a roster spot on the institution's Division I sports team, even if that student had previously been listed on that team's roster, or has competed on the team, and/or has received an athletic financial aid scholarship.

11. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed in West Orange, New Jersey, on this 8th day of April, 2021.

A handwritten signature in cursive script that reads "Josephine (Jo) R. Potuto".

Josephine (Jo) R. Potuto

EXHIBIT A

JOSEPHINE (JO) R. POTUTO

Richard H. Larson Professor of Constitutional Law
University of Nebraska at Lincoln
402-472-1252; jpotuto1@unl.edu
Twitter: [@PtsOfSports_Law](https://twitter.com/PtsOfSports_Law)

PROFESSIONAL HISTORY

Richard H. Larson Professor of Constitutional Law, University of Nebraska College of Law, since 1988;
Professor 1981-88; Associate Professor 1978-81; Assistant Professor 1974-78

Graduate Faculty Fellow, University of Nebraska, since 1985; Member, 1978-85

Visiting Faculty, University of Oregon Summer Sports Law Institute, 2014, 2016-2018

Downing College, Cambridge University, Cambridge England, Summer 2007, 2015

I taught Law and Literature in a summer law program for American law students.

Visiting Professor of Law – Seton Hall University 1994-95; University of Oregon Spring 1991; University of North Carolina Fall Semester 1990; Rutgers Summer 1986; Cardozo Summer 1986; University of Arizona Spring 1982; Visiting Professor, University of Oregon Summer Sports Law Institute 2014, 2016-18

Assistant Prosecutor, Office of the Essex County Prosecutor, Newark, New Jersey, 1983-84 (on sabbatical from the Nebraska Law College); Special Assistant Prosecutor, Office of the Morris County Prosecutor, Morristown, New Jersey, Summers 1991-93, 1996, 1997

I handled more than 15 bench and eight jury trials as well as pretrial and trial motions. I wrote numerous trial and appellate briefs, and had oral argument before the federal district court, D.N.J. (habeas petitions and post conviction relief), New Jersey Superior Court, Trial and Appellate Divisions, and the New Jersey Supreme Court. I also evaluated, and recommended restructuring of, the Office's operational and personnel policies (prosecutor implemented recommendations).

HONORS

2019-20 Dr. Barbara Hibner Trailblazer Award.

Presented "in recognition of outstanding support and generous contributions to Nebraska women's athletics."

2012 Chancellor's Distinguished Lecture (UNL), "The NCAA: Who, What, When, Where, How and Certainly Why," March 27, 2012

Chancellor Distinguished Lecture is given twice annually. Distinguished Lecturer is "highest recognition Research Council can bestow on individual faculty member"; "lectures are high profile public events that celebrate significant achievements and contributions made by faculty."

Douglass Society, since 2010

"Douglass College's highest honor for its most distinguished graduates."

Cline Williams Research Chair, 2006

Outstanding Faculty Member, University of Nebraska College of Law Alumni Association, 2003

Outstanding Faculty Athletics Representative, All-American Football Foundation, 2002

Shining Light Award, Nebraska State Bar Foundation, 1992

"The Foundation's Shining Light Award recognizes the outstanding legal research conducted by a lawyer in Nebraska, whether a practitioner, academician, or a non-practicing lawyer."

Professor of the Year, Nebraska Law College Student Bar Association, 1990

MEMBERSHIPS BY ELECTION

Member, American Law Institute (ALI), since 1987

"The ALI was founded in 1923 . . . to improve the law and the administration of justice in a scholarly and scientific manner. Membership is limited to 4000 judges, lawyers and legal scholars selected based on several factors, including professional achievement, personal character, and demonstrated interest in improving the law."

Fellow, Nebraska Bar Foundation, since 2003

Fellows are "leaders of the legal profession recognized by colleagues."

GRANTS AND COMMISSIONS

Knight Commission on Intercollegiate Athletics Grant, "What's At Our Core? NCAA Division I Voting Patterns vs. Student-Athlete Well-Being and the Amateurism Principle," (with Clough and Dillon) 2012

I was the principal investigator.

NCAA Research Grant, 2004 (with O'Hanlon)

Survey of student-athletes at 19 NCAA Division I Football Bowl Subdivision (FBS) Universities.

Nebraska Unicameral Water Law Study, 1990 (with Harnsberger and Thorson)

Study was commissioned by the Nebraska Unicameral to analyze the constitutionality of water law transfers.

MAJOR DRAFTING PROJECTS

Advisor, National Conference of Commissioners on Uniform State Laws (NCCUSL), Athlete Agents Uniform Act, 1999 to 2000

Reporter, Nebraska Supreme Court Pattern Criminal Jury Instructions, 1989 to 1991

Project Director and Reporter, Model Sentencing and Corrections Act, 1975 to 1978

CONSULTING AND ADVISING RELATED TO ATHLETICS

Compliance and Risk Management

Consultant, NBA Academies, April 2018

Expert & Fact Witness, McNair v. National Collegiate Athletics Association (Wilkinson Walsh + Eskovitz LLP), January to July 2018

Consultant, Bond, Schoeneck & King Law Firm representing FBS University in major NCAA academic misconduct infractions case, Fall 2014; Spring 2017

Consultant, Furman, Watkins & Krutz Law Firm representing former Mississippi head football coach in NCAA infractions case, 2017

Editorial Board, Journal of NCAA Compliance (Peer Reviewed, Western Kentucky University), 2016 to 2018

Consultant, Ball State University (Title IX), Bull v. Ball State University, U.S.D.Ct. (Sn D. Ind.) (expert deposition 12/2011)

Consultant, Hambrick Sports Management, LLC (sports agent issue) v. Andrew Kim, Dallas County (Texas), October 2009 to June 2010 (Hambrick summary judgment motion granted)

Expert & Fact Witness, in preparation for Keller v. National Collegiate Athletics Association, Jackson County (Alabama) Court, November 2007

Amicus Brief, Neal v. Bakersfield, 198 F. 3d 763 (9th Cir. 1999)

Brief was on behalf of seven collegiate coaches associations.

In General

Advisor, National Conference of Commissioners on Uniform State Laws (NCCUSL), Athlete Agents Uniform Act, 1999 to 2000

Consultant, Nebraska State Racing Commission, 1993

I drafted operational rules to govern searches and seizures and administrative hearings. I also served as a hearing officer for the notice and public hearing required before formal adoption of the rules.

ADDITIONAL CONSULTING

Reporter, Nebraska Supreme Court Pattern Criminal Jury Instructions, 1989-91

Project Director and Co-reporter, Model Sentencing and Corrections Act, 1975-78

I was on half-time leave from the Nebraska Law College Spring 1976 to Fall 1977 to fulfill NCCUSL administrative and drafting responsibilities.

BOOKS

Winning Appeals (1992)

Federal Criminal Jury Instructions (2d ed. 1991) (with Perlman and Saltzburg)

Prisoner Collateral Attacks: Federal Habeas Corpus and Section 2255 Motions (1991)

JOURNAL PUBLICATIONS RELATED TO ATHLETICS

The Athletic Department Compliance Job: Descriptive and Prescriptive, 61 Santa Clara L. Rev. 87 (2020)

College Coaches, College Athletes, and the First Amendment, 7 Mississippi Sports L. Rev. 118 (2018)

Swinging at the Facts: How Baseball Informs Legal Argument, 78 LSU L.Rev. 245 (2017) (Accepted into Archives, Major League Baseball Hall of Fame, Cooperstown NY)

Two, Four, Six, Eight; What Can We Now Regulate? The Regulatory Mentality and NCAA Satellite Camps (et al), 35 Quinnipiac L. Rev. 287

The Once and Future NCAA, 6 Ariz. State Sports&Ent. L.J. 85 (2016)

Comparing NCAA and Olympic Athlete Eligibility Dispute Resolution Systems in Light of Procedural Fairness and Substantive Justice (with Matt Mitten), 7 Harvard Journal of Sports & Entertainment Law 1 (2016)

- The NCAA Student-Athlete Reinstatement Process: Say What?, 63 Buff. L. Rev. 297 (2015) (also published in monograph series of the Institute for Higher Education Law and Governance, at <http://www.law.uh.edu/ihehg/series.asp>)
- The Collegiate Mark, The Collegiate Model, and the Treatment of Student-Athletes, 92 Ore. L. Rev. 879 (2014) (with Lyons and Rask)
- Musings from an Old FAR, 2 Mississippi Sports Law Review 233 (2013)
- The NCAA State Actor Controversy: Much Ado about Nothing, Marquette Sports Law Review, 23 Marquette Sports Law Review 1 (2012)
- They Take Classes, Don't They?: Structuring A College Football Post Season, 7 Maryland Journal of Business and Technology Law 311 (2012)
- If it Ain't Broke, Don't Fix It: An Examination of the NCAA Division I Infractions Committee's Composition and Decision-Making Process, 89 Nebraska Law Review 437 (2011) (with Parkinson)
- The NCAA Rules Adoption, Interpretation, Enforcement, and Infractions Processes: The Laws That Regulate Them and the Nature of Court Review, 12 Vanderbilt Journal of Entertainment and Technology Law 257 (2010)
- The Federal Income Tax and Reform of College Athletics: A Response to Professor Colombo and an Independent Critique, 2 Journal of Intercollegiate Sport 233 (2009) (with Lyons)
- National Study of Student-Athletes Regarding Their Experiences as College Students, 41 College Student Journal 947 (2007) (with O'Hanlon)
- Academic Misconduct, Academic Support Services, and the NCAA, 95 KY.L.J. 447 (2007)
- National Study of Student-Athletes Regarding Their Experiences as College Students, www.ncaa.org/library/research/student-athlete_experiences (2006) (with O'Hanlon) (full study, including all subgroups)

ADDITIONAL JOURNAL PUBLICATIONS

- Whose Article Is It Anyway?: Student Editors and Law Reviews, 49 Ind. L.Rev. 609 (2016)
- John Gradwohl: In Loving Memory, 93 Neb. L. Rev. 1 (2014)
- A Practitioner's Primer to the Fourth Amendment, 70 Neb. L.Rev. 412 (1991, reprinted in 5 Criminal Practice L. Rev. 75 (1992).
- Forum Choice in Constitutional Litigation, 78 Neb.L.Rev. 550 (1991)
- Interstate Transfers of Water: State Options After *Sporhase*, 70 Neb. L. Rev. 754 (1991) (with Harnsberger and Thorson), republished by the National Agricultural Law Center at <http://nationalaglawcenter.org/bibliography/results/index.phtml?keyword=harnsberger&dateStart=00&yearStart=year&dateEnd=00&yearEnd=year&submit=View+Results+%BB>
- The Meaning of Proof Beyond A Reasonable Doubt, 2 Guo Wai Fa Xuwe (now Peking University Law Journal) 32 (1988) (published in Chinese)
- The Federal Prisoner Collateral Attack: Requiescat in Pace, 1988 B.Y.U. L. Rev. 38
- Stanley + Ferber = The Constitutional Crime of At-Home Child Pornography Possession, 76 Ky.L.J. 15 (1988)
- The American Prison, Let's Make It a Factory for Change, 18 Toledo L. Rev. 51 (1987)
- And Mussolini Had the Trains Running on Time: A Review of The Bad Check Offense and the Law Enforcement Debt Collector, 65 Neb.L.Rev. 242 (1986)

Prison Disciplinary Procedures and Judicial Review under the Nebraska Administrative Procedure Act, 61 Neb. L. Rev. 1 (1982)

An Operational Plan for Realistic Prison Employment, 1980 Wisc.L.Rev. 291

A Model Proposal to Avoid Ex-Offender Employment Discrimination, 41 Ohio State L.J. 77 (1980)

The Uniform Law Commissioners' Model Sentencing and Corrections Act: An Overview, 58 Neb. L. Rev. 925 (1979) (with Perlman)

The Right of Prisoner Access: Does *Bounds* have Bounds?, 52 Ind. L.J. 207 (1978)

New Jersey Electronic Surveillance Act, 26 Rutgers 617 (1973) (student note)

ADDITIONAL PUBLICATIONS RELATED TO ATHLETICS

D. Covell & S.Walker, Practitioner Perspective, in Managing Intercollegiate Athletics (2d ed.) 196 to 199 (Included among practioner leaders in collegiate athletics)

Academics on Campus, Legal Issues in Collegiate Athletics (Hackney Publications, July 2017)

Q&A with a Sports Law Expert, Sports Law Expert (Hackney Publications July 15, 2017)

So What's a FAR? And What's a FAR For? 11 Sports Litigation Alert 22 (August 22, 2014)

Professors Need Not Apply, Inside Higher Ed (May 19, 2014)

What the EA Sports Settlement Means for the Keller Plaintiffs, 14 Legal Issues in Collegiate Athletics 5 (Hackney Publications, October 2013)

Craig James Would Face Legal Obstacles in Trying to Show Fox Discriminated Against Him, 10 Sports Litigation Alert 19 (October 18, 2013)

Mission: Alignment, NCAA News, April 11, 2005 (with Perlman),
http://fs.ncaa.org/Docs/NCAANewsArchive/2005/Editorial/mission_+alignment+-+4-11-05+ncaa+news.html

CONTINUING LEGAL EDUCATION PUBLICATIONS

Women's Legal Rights Handbook, Nebraska Commission on the Status of Women (chapter editor), 2000

Back to Basics: Seven Steps to Better Writing, 18 The Docket 4, 1993

The Law of Successive Petitions: If At First You Don't Succeed, Try, Try, Again?, Preview, 1990 to 1991 Term (Issue 4, 12/14/90)

Update on Search and Seizure, 23 Prosecutor 9 (Fall 1989)

The At-Home Possession of Child Pornography, Can It Be A Crime?, Preview, 1989 to 1990 Term (Issue 5, 12/15/89)

Presumptions and the State's Burden to Prove Guilt Beyond a Reasonable Doubt, Preview, 1988 to 1989 Term (Issue 3, 4/28/89)

Miranda Warnings and Police Statements: Is the Truth Misleading?, Preview, 1988 to 1989 Term (Issue 13, 4/28/89)

State Criminal Prosecution and Federal Removal, Preview, 1988 to 1989 Term (Issue 6, 12/16/88)

LEGISLATIVE AND ADMINISTRATIVE HEARINGS RELATED TO ATHLETICS

Testimony at Due Process and the NCAA Hearing, House of Representatives Judiciary Committee, Subcommittee on the Constitution, October 2004, Washington D.C.

I was asked by the NCAA president to represent the NCAA before the Subcommittee.

Presentation, Title IX Reform, Department of Education Commission on Opportunities in Athletics, Colorado Springs, Colorado, October 22, 2002

Testimony at Nebraska Athlete Agents Act Hearing, Nebraska Unicameral Judiciary Committee, 2001

Additional Hearings

Testimony at Constitutionality of School Districts Created Along Racial Lines Hearing, United States Commission on Civil Rights, Omaha, Nebraska, September 2006

I was invited by the Commission to provide written and in-person testimony.

Testimony at Child Witness Testimony Legislative Bill (LB 90) Hearing, Nebraska Unicameral Judiciary Committee, February 12, 1987

I redrafted LB 90 at the request of the Judiciary Committee. LB 90 was signed into law in May 1988 (Neb. Rev. Stat. 29-1917). For a full description of its adoption, see Campbell, LB90 and the Confrontation Clause: The Use of Videotape and In Camera Testimony in Criminal Trials to Accommodate Child Witnesses, 68 Neb. L. Rev. 372 (1989).

I have testified before the Nebraska Unicameral's Judiciary Committee on numerous occasions with regard to criminal law issues as well as issues ranging from the Nebraska judicial nominations process to evidence and procedural matters to the composition and functions of the Nebraska High School Association. On numerous occasions I have reviewed draft legislation for the Committee or individual senators.

SELECTED PRESENTATIONS, LECTURES, SPEECHES, PODCASTS, FILMS, AND VIDEO WEBINARS RELATED TO ATHLETICS

Panel Participant, Virtual Symposium on Name, Image, Likeness, Notre Dame Journal of Legislation, April 9, 2021

Interviewee, Documentary, NCAA Name, Image, Likeness, Pulse Films, March 2021

Alston Moot Court, Penn State Law College (Judging Panel w/ David Hamilton, Judge, 7th Cir.; Thomas Vanaskie, ret Judge, 3d Cir.), March 19, 2020

"The Athletics Director and the FAR (with Bill Moos), Positive Energy Podcast, <https://athleticdirectoru.com/video/successful-ad-and-far-synergy-nebraska-moos-potuto/>

"The First Amendment and College Athletics," Southeast Association of Law Schools (August 11, 2018)

"Risk Management: Are You Prepared?," National Association of Collegiate Directors of Athletics (June 27, 2018)

"The First Amendment on the Field: Baseball and Legal Arguments," Sports Law Conference, Louisiana State University (forthcoming January 27, 2017)

"NCAA Autonomy Conferences: Their Jurisdiction and Legislative Initiatives," Joint Law, Business, and Journalism Conference, Arizona State Law College (April 8, 2016)

"Professional and Intercollegiate Sports in 2015: Challenges and Opportunities in the Coming Decade," Arizona State Law College (March 12, 2015)

"The Role of the Faculty Athletic Representative and What Athletics Directors Need to Know," Winthrop Intelligence Google Hangouts Program (November 14, 2014)

"The Collegiate Model: Kiss It Goodbye?" Osher Lifelong Learning Institute (November 13, 2014)

"NCAA Structure" Elon Law Review Symposium on Media, Regulatory & Labor Issues in College Sports, Elon Law College (November 6, 2014)

- “Crisis in Collegiate Athletics,” Association of Public and Land Grant Universities (Orlando Florida November 4, 2014)
- “Resolution of Sports Disputes”; Panel Presenter, “Legal and Business Issues in Collegiate Athletics,” National Sports Law Institute (Marquette University Law College (October 17, 2014)
- “The Playbook Has Changed,” Chicago Ideas Week (Mayor Rahm Emanuel, chair) (October 14, 2014)
- “Stresses and Observations: College Athletics 2014 and After,” SCI Google Hangouts Program (October 7, 2014)
- “What O’Bannon Means, and What Campuses Need To Do,” National Association of College and University Attorneys (Denver, Colorado June 24, 2014)
- “Keller/O’Bannon and Beyond,” University of Oregon Symposium, The NCAA in Crisis: The Crossroads of Intercollegiate Sports (April 11, 2014)
- “The NCAA Today: Identity and Challenges,” University of Mississippi Law College (November 8, 2013)
- “The Organizational Structure and ‘What For?’ of the NCAA,” Skadden Arps (NYC June 24, 2013)
- “University Oversight and Structures of Control: A Case Study and Recommendations,” Texas Higher Education Law Conference (Dallas, Texas March 26, 2013)
- “What Every Regent Should Know about NCAA Rules,” University of Nebraska Board of Regents and President (November 2, 2012)
- “The Why and Why Not of NCAA Punishment,” Symposium on the Proper Role of Sports in Higher Education, Santa Clara Law College Ethics and Sports Institute (September 2012) *I also participated on a panel on NCAA Enforcement.*
- “Disciplinary Issues in College Athletics,” Panel Respondent to Keynote Speeches on the Proper Role of Sports in Higher Education, Santa Clara Law College Ethics and Sports Institute (September 2012)
- “Faculty Oversight of Athletics,” Southeastern Association of Law Schools (July 2012)
- Presenter/Panel Participant, “Hot Topics in College Athletics,” Marquette University National Sports Law Conference (October 21, 2011)
- Presenter/Panel Participant, "The Intersection of Sports and Business in Today's Legal Arena," University of Maryland Law College Symposium (October 3, 2011)
- Project Consultant/Presenter, NCAA Enforcement and Infractions Experience Media Project (2011)
- Consulted on project materials and scope of moot hearing; served as one of two members of Committee on Infractions at moot hearing before NCAA Division I Board of Directors (April 27, 2011) and selected media representatives (May10, 2011), at the 2012 NCAA Convention, and at the 2012 annual meeting of the Faculty Athletic Representatives Association.*
- “Institutional Core Principles and Institutional Control,” Executive Masters Program, Evans School of Public Affairs, University of Washington (April 19, 2011)
- “NCAA Governance,” University of Oklahoma Graduate Students and Athletics Interns (February 16, 2011)
- Panel Participant, “The Death of Amateurism: Implications for Sport and Health,” Center for Sport and the Law, University of Baltimore Law School (October 28, 2010)
- “The Collegiate Model of Amateur Athletics” (with Kaburakis), Joint Conference on the Law and Business of International Sport, University of Istanbul, Turkey (September 2010)

The Conference was held in conjunction with the International Basketball Federation (FIBA) World Championships. I also reviewed papers submitted for presentation at this Conference.

Panel Participant, “Amateurism Compliance, 21st Century, Intellectual Property and Student-Athletes’ Rights of Publicity,” National Association of Collegiate Directors of Athletics, Anaheim, California (June 21, 2010)

“Faculty Campus Role Regarding College Athletics,” Coalition on Intercollegiate Athletics, University of Arizona (March 8, 2009)

Panel Participant, “Investigations and Violations,” Faculty Athletics Representatives Association (FARA) (San Diego, California November 13, 2008)

Panel Participant, Infractions and Penalties, Knight Commission on Intercollegiate Athletics (Washington D.C. June 17, 2008)

Panel Participant, Faculty Summit, Knight Commission on Intercollegiate Athletics, National Press Club (Washington D.C. October 15, 2007)

“First Amendment Issues in Athletics,” Sports Law Scholarship and Teaching Colloquium, Marquette University Law School (September 27, 2007)

“NCAA Enforcement and Infractions Processes,” Florida International Law College Center for Sports and the Law (March 15, 2007)

“Ruminations on Compliance,” National Association for Athletics Compliance Directors, University of Minnesota (July 18, 2006)

Panel Participant, NCAA Violations: Self Discovery and Investigations, NCAA Regional Compliance Seminars (May 6, 20, and June 3, 2004)

“Title IX and College Athletics,” Chancellor’s Commission on the Status of Women, UNL (April 13, 2004)

“The NCAA and Institutional Control”

I have given this presentation to numerous groups including the Osher Lifelong Learning Institute, November 8, 2009; Lincoln Bar Association, March, 2007; the Lincoln Rotary Club, February 8, 2005; and the Nebraska Daily Publishers Association, October 16, 2003.

Debate Participant, “Justice Talking – Title IX and College Athletics,” National Public Radio, Annenberg Public Policy Center (December 2000)

“The Role of A Faculty Athletics Representative,” NCAA Regional Seminar (Tampa, Florida May 2000)

“Whither FARA?,” FARA (New Orleans, Louisiana November 1999)

SELECTED ADDITIONAL PRESENTATIONS AND SPEECHES

“Separation of Powers, League of Women Voters, Lincoln NE (October 2, 2019)

“The First Amendment on Campus,” UNL Student Body (April 6, 2018)

“The First Amendment Administered,” UNL Student Services Staff and Administrators (March 16, 2018)

“The First Amendment: Recent Developments,” Nebraska Judges Continuing Legal Education Seminar (February 12, 2018)

“Citizens and the Fourth Amendment,” Osher Lifelong Learning Institute (November 2011)

“The Parameters and Overall Structure of the United States Constitution,” Osher Lifelong Learning Institute (November 2011)

Panel Participant, Josephson's Creating a Community of Character Education Institute, UNL (September 2000)

Panel Participant, First Amendment Forum, Nebraska Press Association (April 7, 2000)

The other panelists were Paul Duke, then the moderator of Washington Week in Review, and Lyle Denniston, then the Supreme Court Reporter for the Baltimore Sun.

"Constitutional Litigation," Alliance Defense Fund (San Juan Puerto Rico, June 1999)

"Winning Constitutional Appeals," Alliance Defense Fund (Cancun Mexico July 2000); (San Juan Puerto Rico June 1999); (Cancun Mexico May 1998)

"Challenges of Distance Learning," UNL Chancellor's By-Invitation-Only Conference (May 1995)

"Free Speech vs. Sexual Harassment: Common Ground, Not Battleground," UNL Chancellor's Cabinet and all Deans (March 1994)

"Future of the Criminal Law," Plenary Session, The Future and The Courts, American Judicature Society and State Justice Institute (San Antonio, Texas 1990)

Moderator and Drafter of Discussion Script, Nebraska ETV Discussion Program, Teenagers and Drugs, (Spring 1990)

"Search and Seizure," Kansas Prosecutors Association (Lawrence, Kansas June 1990); Nebraska Joint Law Enforcement Coordinating Committee (Kearney, Nebraska May 1990)

"State Criminal Jury Instructions," Nebraska State Bar Association (October 1990); Nebraska Defenders Association (February 1990); Nebraska CLE Program (October 1989)

"Search and Seizure" (for newly appointed federal district judges), Federal Judicial Center (Washington, D.C. December 1988)

Moderator, Nebraska ETV Discussion Program, Affirmative Action (Fall 1986)

"Habeas Corpus: A Collateral Attack on a Criminal Conviction," United States District Court, D. Neb., Federal Practice Conference (UNL November 1986)

"Effective Appellate Advocacy," Nevada Bar Association CLE program (Las Vegas and Reno September 1986)

FACULTY ATHLETICS REPRESENTATIVE (FAR), SELECTED ACTIVITIES

The FAR is a required position under NCAA bylaws with oversight responsibility for athletics and also serves in conference governance and on NCAA councils, cabinets, and committees. I was appointed to the position in 1998 by the Chancellor of the University of Nebraska at Lincoln after a search committee process that included members of the tenured faculty at UNL as well as the director of athletics.

FAR Service on Campus

Chair, Chancellor's Intercollegiate Athletics Review Committee, since July 2004

I have the authority to convene this committee when I believe there is an issue in athletics that must be handled independent of the athletics administration. Other members of the committee are the university general counsel and the UNL vice chancellor for student affairs.

Member, Academic Senate Intercollegiate Athletics Committee (IAC)

Member, Student-Athlete Transfer Appeals Subcommittee

Member, Student-Athlete Scholarship Non-Renewal Appeals Subcommittee

Member, Athletics Academic Services Annual Audit Subcommittee

FAR Service External to Campus

NCAA

Member, NCAA Interpretations Committee, 2016 to 2020

Member, Search Committee, NCAA Executive Vice President of Regulatory Affairs, 2014

Member, NCAA Student-Athlete Affairs Group Advisory Committee, 2010 to 2016

This committee advises the NCAA Student-Athlete Affairs Group staff in its missions to enhance the campus experiences of student-athletes and to formulate life skills and career development programming for student-athletes and athletics department coaches and staff.

Invited Participant (one of two FARs), NCAA Presidential Retreat, "Issues Facing College Athletics," August 9-10, 2011

Chair, NCAA Division I Committee on Infractions, 2006-08; Vice Chair 2004-06; Member 1999 to 2004. *When I served, the Committee met six times annually to decide cases involving institutional culpability for NCAA violations committed by coaches, staff members, student-athletes, and boosters. Members may serve a maximum of three-year terms; on occasion thereafter they are asked to substitute at a hearing.*

Member, NCAA Post-Graduate Scholarship Committee, Region V, 2002-09

Member, Special NCAA Internal Review Committee (appointed by NCAA President), 2005-07

Member, NCAA Division I Management Council, 2003-07

The Management Council was the chief legislative and policy-making arm of the NCAA, subject to the NCAA Board of Directors. It was sunsetted in 2008 and has been replaced by the Division I Legislative and Leadership Councils.

Member, Legislative Review Subcommittee, 2003-07

Member, Administrative Review Subcommittee, 2003-04

Member, Special NCAA Arbitration Review Committee (appointed by NCAA President), 2005

Member, NCAA Men's Gymnastics Committee, 2000-04

Member, NCAA Athletics Site Certification Team, Ohio State University, 2003; University of Maryland, 2001

Conference

Chair, Big Ten Conference Joint Council, 2016-2017

I served on numerous Big Ten Conference committees and drafted the revised appeals and committee process.

Big Ten Conference Representative, Autonomy 5 Convention, 2016; 2017

President, Division 1A Faculty Athletics Representatives (1A FAR), 2008-12

Member 1A FAR Board and Executive Committee, 2004 to present

Member 1A FAR Steering Committee, 2003 to 2004

NCAA Division I Representative, Executive Committee, FARA, 1998 to 2001

Chair, Big 12 Conference Council of Faculty Athletics Representatives, 1998-99

I served on numerous Big 12 Conference committees, including Strategic Planning, Administrative, Budget and Finance, Interpretations.

ADDITIONAL SERVICE

Professional

Member, Executive Committee, Association of American Law Schools (AALS) Sports Law Section, 2008 to 2016

Member, United States District Court, D. Neb., Federal Practice Committee (appointed by Chief Judge), 1980 (inception) to 1997

Member, United States District Court, D. Neb., Civil Justice Advisory Group (appointed by Chief Judge), 1995 (inception) to 1997

Master, Van Pelt Inns of Court, 1993-94

Member, Nebraska Supreme Court Committee on Practice and Procedure, 1985-92

Member Association of American Law Schools (AALS) Committee for Academic Freedom and Tenure, 1990-93; Member of Committee Panel to Hear Academic Freedom Complaint filed by faculty member against AALS member law college, 1992

UNL Law College Representative to AALS, 1985-98

Member, Nebraska Commission on Law Enforcement and Criminal Justice (appointed by Governor), 1993-94

Member, County Attorney Standards Advisory Council (appointed and reappointed by three successive Nebraska Governors), 1985-93

Member, Lancaster County (Nebraska) Justice Council (appointed by County Board), 1985-87

Member, Lancaster County Advisory Committee on Corrections (Appointed by County Board), 1981-84

Member, Board of Directors, Legal Services of Southeast Nebraska, 1977-81

University

Member, University Special Bioethics Advisory Committee (appointed by the President of the University of Nebraska System), 2000-02

Nebraska's Representative to the University Advisory Council, Fair Labor Association (FLA), Washington, D.C., June 20, 2000

The FLA is a "nonprofit organization dedicated to ending sweatshop conditions in factories worldwide."

UNL

Member, UNL Chancellor Search Advisory Committee, 2015-16

Chair, UNL Academic Senate's Academic Freedom and Tenure Committee to hear Faculty Member's Appeal of Reappointment Denial, 2010-11

Member, UNL Academic Senate, 2009-11

Member, Interdisciplinary Faculty Committee on Human Trafficking 2009-11

Among its projects, the Committee is working to develop a Center on Human Trafficking at UNL and also is a conduit for grant applications.

Member, Search Committee for Associate to the Chancellor, 2008

Member, Search Committee for Senior Vice Chancellor for Academic Affairs, 1992

Law College

Honor Court Prosecutor, 2020 to Present; 1991 to 1993

Faculty Advisor, Nebraska Entertainment and Sports Law Association, 2006-15

Member, Search Committee for Law College Dean, 2009-10

Faculty Advisor, Women's Law Caucus, 1989-99

Faculty Advisor, National Moot Court Team, 1979-83, 1986-88

Faculty Advisor, Nebraska Law Review, 1980-82, 1985

Faculty Advisor, National Client Counseling Competition Team, 1974-79

Selected UNL Law College Standing Committees – Honor Court, Faculty Appointments, Curriculum, Grade Appeals, Joint Law College-Psychology Department Law-Psychology Committee, Honor Court Prosecutor. Special Committees – ABA/AALS Site Certification Committee, Tenure Standards Review Committee, Tenured Faculty Special Issue Committee, Tenured Faculty Promotion and Tenure Evaluation Committee

SEMINARS AND CONFERENCES

Seminars and Conferences Developed and/or Administered

International Conferences on Human Trafficking, UNL, October 2009 and 2010

I served on the Conference planning committee that also selected papers for presentation.

Eighth Circuit Judicial Conferences, July 1987; July 1985

Coping With Your Federal Appointment, United States District Court, D. Neb., Federal Practice Conference, UNL, November 1986

How to Win Your Case Pre and Post Trial, United States District Court, D. Neb., Federal Practice Conference, UNL, August 1983

Seminars and Conferences Attended

Chancellor's Character Counts Conference, UNL, February 24 to 26, 2000

Public Trust and Confidence in the Courts Project, University of Nebraska Public Policy Center, 1998-99

Fellowship to attend 10-day seminar, The Quantitative Method and Advanced Law and Economics for Law Professors, George Mason University Law & Economics Center, Hanover, New Hampshire (Dartmouth College), July 1990

Fellowship to attend two-day seminar, Teaching Abstract Reasoning, UNL Teaching and Learning Center, September 1989

Fellowship to attend week-long seminar, Professional Ethics, UNL Center for the Teaching and Study of Applied Ethics, May 1988

Fellowship to attend three-week N.E.H. Seminar on the Constitution, The Genius of the Constitution, Colorado Springs, Summer 1987

Seminar (for law faculty) on Statistics and Social Science Methodology, UNL Spring 1987

Fellowship to attend two-week Law and Economics Institute for Law Professors, Emory University Law and Economics Center, Atlanta, Georgia, May 1986

Fellowship to attend National Institute of Trial Advocacy two-week seminar in trial practice, University of Kansas Law College, May 1983

EDUCATION

J.D., Rutgers Law College, 1974 (M.A., Seton Hall University, English Literature; B.A., Douglass College, Journalism)

Editor-in-Chief, Rutgers Law Review

Captain, Rutgers National Moot Court Team

Order of the Barrister

Alumni Senior Prize

“To graduate with most accomplished law college record and most promise in a legal career.”

BAR ADMISSIONS

Supreme Court of the United States; Court of Appeals for the Third Circuit; United States District Court, D. Nebraska, D. New Jersey; licensed to practice law in Nebraska and New Jersey

MEDIA INTERACTIONS

I regularly do interviews, primarily on sports law issues. I have been quoted in, among others, the NY Times, the LA Times, the Miami Herald, the Chronicle of Higher Education, and Inside Higher Education. Most recently, I have been quoted in the Wall Street Journal, the Washington Post, the KC Star, the Intercollegiate, ESPN.com, and Yahoo Sports.